

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SCOTT D. HEMSLEY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM DECISION AND
ORDER DENYING PETITIONER’S
MOTION FOR CERTIFICATE OF
APPEALABILITY AND GRANTING
PETITIONER’S MOTION FOR
LEAVE TO APPEAL IN FORMA
PAUPERIS

Civil Case No. 2:07-CV-179 TS

Criminal Case No: 2:02-CR-87

On August 17, 2007, the Court denied Petitioner’s Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255.¹ Petitioner filed a Notice of Appeal October 15, 2007.² Petitioner now seeks a certificate of appealability (“COA”)³ and a for leave to appeal in forma pauperis.⁴

¹Docket No. 14.

²Docket No. 15.

³Docket No. 16.

⁴Docket No. 19

An appeal from a final order in a proceeding under 28 U.S.C. § 2255 may not be taken unless a judge or circuit justice issues a certificate of appealability.⁵ A COA may issue only “if the applicant has made a substantial showing of the denial of a constitutional right.”⁶ “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.”⁷

Petitioner has applied for a COA on the following issues: (1) ineffective assistance of counsel; and (2) a violation of his Sixth Amendment Rights. The Court discussed each of these issues in its August 17, 2007 Order.⁸ Petitioner’s Application for Certificate of Appealability merely rehashes the issues the Court addressed in resolving Petitioner’s § 2255 Motion. The Court finds Petitioner has failed to show that jurists of reason could disagree with the Court’s resolution of Petitioner’s § 2255 Motion.

It is therefore

ORDERED that Petitioner’s Application for Certificate of Appealability (Docket No. 16) is DENIED. It is further

ORDERED that Petitioner’s Motion for Leave to Appeal in Forma Pauperis (Docket No. 19) is GRANTED.

⁵28 U.S.C. § 2253(c)(1).

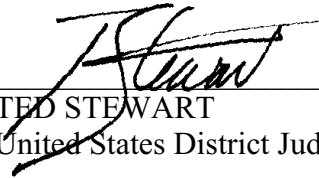
⁶*Id.* § 2253(c)(2).

⁷*Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

⁸Docket No. 14.

DATED November 5, 2007.

BY THE COURT:



TED STEWART
United States District Judge